2130.

SUPREME COURT OF THE UNITED STATES,

No. 121.

ANDREW WYLIE, JR., ADMINISTRATOR OF SAMUEL BALDWIN, APPELLANT,

vs.

RICHARD S. COXE.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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Style of court.

DISTRICT OF COLUMBIA, TO WIT:

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-second day of the same month, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the United States the seventy-sixth.

Present: The honorable William Cranch, chief judge; James S. Morsell and James Dunlop, assistant judges; Richard Wallach, esq., marshal; John A. Smith, clerk.

In the records of the proceedings of the same court, amongst others are the following, to wit:

Parties.

RICHARD S. COXE, use of John M. Baldwin,
vs.
ANDREW WYLIE, jr., administrator of Samuel Baldwin.

Be it remembered that heretofore, to wit, the said Richard S. Coxe filed in court here his bill of complaint in form following, to wit:

Bill of complaint.

To the honorable the judges of the circuit court of the District of Columbia, for the county of Washington, in equity, humbly complaining:

Showeth unto your honors, your orator, Richard S. S. Coxe, of the city of Washington, in the District of Columbia, that about the year eighteen hundred and forty-two or forty-three a certain Samuel Baldwin, a citizen of the United States residing in Mexico, had a claim against the Republic of Mexico for personal outrages and losses of property by him suffered and sustained by officers of the Mexican Government. At that period there were many claims of this description which had been brought to the notice of the Government of the United States, for the purpose of obtaining the active interposition of said Government in obtaining indemnity from the Mexican Republic. Your orator was employed by several of said claimants to take the necessary steps to prosecute their cases, among others by Dr. John Baldwin, the brother of the said Samuel. Your orator was thus employed by said Samuel Baldwin; and various documents and papers, connected with the same, were placed in his hands, showing the cha-

racter of the acts in which this claim originated. Being thus employed, your orator took the proper means to bring the case of said Samuel Baldwin to the notice of the Government, and for several years was employed in efforts to induce it to press these various claims to a settlement, to procure the indemnity to which the parties were entitled. In this business your orator expended much time and labor in written and oral communication with several Secretaries of State. Before anything was accomplished, however, war intervened between the two countries, and the adjustment of these claims was necessarily postponed. Peace was concluded between them, however, by the treaty of Gaudaloupe Hidalgo, executed on the 2d February, 1848, which provided for the settlement of claims of citizens of the United States against Mexico, as by reference to the same will appear.

Your orator further shows, that on the 3d day of March, 1849, [was] passed an act entitled "An act to carry into effect certain stipulations of the treaty between the United States of America and the Republic of Mexico, of the second day of February, one thousand eight hundred and forty-eight," as by reference to the same will appear. Under this act three persons were appointed to constitute a board of commissioners, empowered to receive, examine, and decide upon all such claims of citizens of the United States against Mexico. This board having been organized, all the documents and papers connected with said claims were, including those in the case of the said Samuel Baldwin, transmitted by the Secretary of State, to wit:

Your orator shows, that up to this period, viz., April, 1849, no other party or person, so far as he knows or believes, had acted as the agent or attorney of said Baldwin in the premises, except your orator himself, and that every thing that was done in presenting the case before the Government of the United States, and urging upon it the procurement of indemnity, was done exclusively by him.

Shortly after what has occurred, your orator learned that said Samuel Baldwin had died, and with the concurrence of your orator, and, to some extent, under his advice, letters of administration upon his estate were applied for and granted by the orphan's court of the county of Washington to Andrew Wylie, esq. Your orator had frequent and full conversations with Dr. John Baldwin and said Wylie on this business, and advised as to the memorial which was to be prepared and presented to said board of commissioners, and aided in the preparation of the same.

Your orator further shows, that the said board of commissioners made a final award in the case, in favor of said Andrew Wylie, administrator of the said Samuel Baldwin, for the sum of seventy-five thousand dollars, which amount has been, or will shortly be, paid to the said Andrew. And your orator believes, and therefore avers, that the success which has thus attended the prosecution of this claim, may be in a very considerable degree *be* attributed to the acts and measures of himself personally, and to the explanations and arguments which he ad-

dressed to the commissioners, removing and satisfying doubts which had suggested themselves to their minds.

Your orator further shows, that although no distinct agreement was made for any specific amount of compensation, it was understood that your orator was to receive a commission of five per cent. upon whatever sum should be awarded on account of this claim out of the money so awarded; and he does aver and believe that he is in justice and equity fully entitled for his services in the premises to that proportion of the sum so awarded as aforesaid, viz., the sum of three thousand seven hundred and fifty dollars.

And your orator shows, that he has presented his said claim for the said sum of said Andrew Wylie, administrator as aforesaid, who has declined to pay the same, on the ground that, unless secured by a decree of this honorable court, the parties interested in the said estate may seek to hold him responsible. And your orator can have no relief in the premises to enforce his lien upon, and interest in said fund, except by the aid of this honorable court.

To the end, therefore, that the said Andrew Wylie may be and appear in this honorable court, and upon his corporal oath true, full, and perfect answer make to the premises, as if the same were here repeated, and he thereto specially interrogated, and further answer to the special interrogatories hereunto annexed, and that he may be decreed and ordered by this honorable court to pay over to your orator the aforesaid sum of three thousand and seven hundred and fifty dollars, with interest for any delay that may occur, together with his costs; may it please your honors, the premises considered, to grant unto your orator the United States writ of subpœna and injunction, to be directed to the said Andrew Wylie, administrator as aforesaid, &c., &c.

RICH'D S. COXE, *in pro. per.*

Special interrogatories to said defendant.

1. At what time, under what circumstance, and at whose suggestion, and with whose advice, did you apply for and obtain letters of administration on the estate of Samuel Baldwin, deceased?

2. Did you, with Dr. John Baldwin, the brother of the intestate, call on complainant, or by yourself, and have any, and what conversation, with him on the subject?

3. Has any property or assets of said intestate come to your hands or knowledge, except his claim on the Mexican Republic?

4. Up to the time when you obtained letters of administration as aforesaid, who was the agent for said intestate in reference to said claim? Did you not know, or were you not informed, at and before said time, that the complainant had acted in that capacity; and did any other person so act, or procure or file any papers in the State Department in relation to the same?

5. Did you not consult complainant as such agent in relation to the memorial addressed to the board of commissioners on the subject of

said claim; and have you not consulted with him on the same subject since? And did he not communicate to you the doubts as to the validity of said claim, or the principal part of it, which had been suggested [to] him by the commissioners, or some of them, and that he believes he had succeeded in removing said doubts?

6. Has not an award [been] made in your favor on account of said claim for the sum of $75,000; and is not that sum held by you to be accounted for as administrator as aforesaid?

7. Has the complainant claimed an interest of five per cent. in said amount so awarded, and called upon you to pay it to him? Did you decline, and what reasons did you assign to him for so doing?

RICH'D S. COXE.

CIRCUIT COURT,
District of Columbia.

Personally appeared in open court Richard S. Coxe, the complainant in the foregoing bill, who, being duly sworn, says that the facts and averments in the foregoing bill contained, so far as they purport to be of his knowledge are true, and so far as they purport to be derived from the information of others, he believes them to be true.

Sworn this 13th of May, 1852.

Test: JNO. A. SMITH, *Clerk*.

Whereupon subpœna issued as prayed. And the said defendant appeared and filed in court here the following answer, to wit:

Answer.

To the honorable the judges of the circuit court of the District of Columbia, for the county of Washington, in equity. The answer of Andrew Wylie, jr., administrator of the estate of Samuel Baldwin, deceased, to the bill of complaint of Richard S. Coxe:

This respondent, now and at all times hereafter, saving and reserving to himself all exceptions that might be had or taken to the manifold errors, uncertainties, and imperfections in the said bill of complaint contained, nevertheless for answer thereunto, or unto so much thereof as he is bound to make answer unto, answers and says:

That in the year 1849 respondent was called upon at his office by John Baldwin, in company with complainant, who informed the respondent of the existence of a claim against the United States for damages, in consequence of losses sustained and injuries suffered by Samuel Baldwin in his lifetime from the Mexican authorities, and of their purpose to prosecute said claim, on behalf of said Baldwin's estate, before the Board of Commissioners which had been appointed under the act of 3d March, 1849. Inasmuch as the widow and children of the deceased resided in Mexico, it was deemed important, and, indeed, necessary, that letters of adminstration should be obtained upon the estate from the orphan's court of the District of Columbia. On the

same day, or very shortly afterwards, letters of administration were accordingly granted to your respondent, and he gave bond, qualified, and entered upon the duties of his appointment. The said Richard S. Coxe was not employed by respondent as attorney in the case, either then or at any time afterwards; nor did this respondent ever employ any counsel in the prosecution of the claim. Respondent did suppose that the said Richard S. Coxe had been employed by the said Samuel Baldwin in his lifetime, and by the widow afterwards, in regard to the case; but whether such was the fact or not respondent had no evidence, nor does he yet know.

Soon after the interview aforesaid, respondent prepared a draft of a memorial to be presented to the said board, setting forth the grounds of the claim aforesaid. This draft was submitted to complainant by this respondent under the impression derived from the first interview, that complainant was lawful attorney of the widow of the said Baldwin. It was left by respondent on the table of complainant in the absence of the latter. Some days afterwards complainant informed this respondent that the memorial was, in his judgment, correctly drawn, and proper to be presented to the board. That draft, however, respondent is confident was used in the case. Additional documentary and other information being furnished to respondent, a different memorial was prepared on this evidence, and presented to the board by and in the name of respondent alone, without any consultation with, or the knowledge of, the said complainant. This arose from no disposition on the part of this respondent to get rid of his connexion in the case with the complainant, whom he regarded with the most favorable feelings, and for whose talents and learning he entertained the greatest respect. But a Mr. Peter Goix had about this time reached Washington, bringing a power of attorney from the widow, containing the most ample authority to enable him to prosecute this and all other claims belonging to the estate of her husband, deceased, and to employ counsel, &c. He also brought with him authenticated evidence as to the marriage, and the birth and baptism of several children of Baldwin and his wife; also an authentic copy of the last will of said Baldwin, in which he devised all his property to his widow and children, and appointed her executrix of the will, and guardian of the children; also a letter of introduction from John Baldwin to this respondent, in which the writer recommended the said Goix to respondent as the sole agent, having exclusive authority as to the whole business of the estate in this country. These papers, with the exception of the letter aforesaid, are now on file in the register's office of this district, to be produced if the honorable court shall direct it. Mr. Goix informed respondent that he had positive instructions from the widow not to employ Mr. Coxe, and would be compelled so to inform him. Afterwards Mr. Goix told respondent that he had written to complainant to that effect, and had received no answer. Respondent also says that he himself informed Mr. Coxe at the time of the substance of the foregoing statement, to which Mr. Coxe made no reply.

After this respondent ceased to consider Mr. Coxe as having any thing to do as counsel in the case, and, so far as respondent knew, he never subsequently acted, or claimed to act, as such.

Respondent admits that he has been informed by Mr. Coxe himself, and of the truth of the statement respondent has not a doubt, that on one or two occasions he happened to be present with the Board of Commissioners whilst they were considering in regard to this claim, and that he rendered essential service in removing objections which might have proved very injurious, if not fatal, to it, if they had not been removed.

As to these services they were rendered voluntarily, so far as respondent is concerned. The selection and employment of counsel in this case was left by respondent entirely to the authorized agent of the widow, who acted on his own responsibility, made his own selections, and entered into his own contracts as her attorney.

This respondent further answering says, that he does not know, and therefore cannot assert, whether said complainant was or was not employed by said Samuel Baldwin in his lifetime in regard to this claim. Baldwin died in the month of , 1848, prior to the passage of the act of 1849, and before any provisions had been made, either by treaty or law, as is believed, for the settlement of his claim. Subsequently to the death of Samuel Baldwin, respondent, so far as he as administrator is concerned, denies that complainant was ever employed by, or acted as the authorized attorney of, respondent If complainant was employed by any other person or persons representing the widow or the estate in any way, respondent is ignorant of their authority, and asks that it may be shown. Respondent was induced by the actions and representations of said complainant, and of John Baldwin, to suppose that the latter was the authorized agent of the widow in regard to the prosecution of this claim, and remained under that impression until the arrival of Mr. Goix in this country, when he was informed by said John Baldwin that he had no authority or powers on the subject, and that what he had been doing, or should thereafter do, in behalf of the estate, was and should be only as the friend of his deceased brother's family. Some papers in regard to the claim had been filed in the State Department by Mr. Coxe in the year 1844 or 1845; at least so they purport to have been; but the whole of the evidence used to establish the claim was obtained either by Mr. Goix or by this respondent subsequently to the death of Samuel Baldwin, and after notice as aforesaid had been given to Mr. Coxe, that his connexion with the case was without authority.

Besides the sum of seventy-five thousand dollars referred to, respondent knows of no other property or assets of said estate situate in the United States, excepting only a claim to a distributive share of one thousand dollars, or thereabouts, due to Samuel Baldwin in his lifetime from the executors of his father's estate.

It is true that, since the making of the award aforesaid, said complainant has claimed to be allowed by respondent, administrator of said estate, the amount of five per cent. thereon for his alleged services in

the case. But subsequently to the notice given to said complainant by Mr. Goix as aforesaid, as well as by this respondent, and so long as the claim was pending before the board, respondent denies that he ever consulted with or recognised said complainant as counsel in the case, nor did he understand the said complainant to insist upon being regarded as such. These are the reasons why the payment of said commissions was refused by respondent.

In justice to himself, as well as from respect to Mr. Coxe, this respondent will here state, that the course he adopted in regard to complainant, and in resisting his claim for commissions in this matter, has been urged upon respondent most reluctantly, by what he could not but regard as his sworn duty to the estate for which he was acting. Respondent would have been glad to have had the aid of complainant throughout the prosecution of the claim, and to have paid him for his valuable services so rendered. But under the circumstances above detailed, he could not feel himself sustained, either by the law or his sense of duty, thus to act.

And this respondent prays that, for the causes and facts set forth in this his answer, he may be hence dismissed with his cost and damages in this behalf most wrongfully and inequitably sustained.

ANDREW WYLIE, Jr.
In pro. per.

DISTRICT OF COLUMBIA,
Washington county, sct.

On this 10th day of June, 1851, personally appeared before the subscriber, Andrew Wylie, jr., the respondent in the foregoing answer in chancery named, who being duly sworn according to law says, that the facts and allegations in said answer contained, so far as they purport to be of his own acts and doings are true, and so far as they relate to or purport to be the acts and doings, or derived from the information of others, he believes them to be true.

Sworn in open court this day and year aforesaid.

Test, JNO. A. SMITH, *Clerk*.

Replication.

Whereupon the complainant filed in court here the following replication, to wit:

The complainant, saving and reserving to himself all and all manner of exceptions, &c., for replication to the answer of said defendant, saith, that he does and will aver, maintain, and prove, their said bill to be true and sufficient in the law to be answered unto by said defendant, and that the answer is very uncertain, evasive, and insufficient in the law to be replied unto by the repliant; without that, &c.

Whereupon the said defendant in his proper person filed in court here the following amended answer, to wit:

Amended answer.

The amended answer of Andrew Wylie, jr., administrator of the estate of Samuel Baldwin, deceased, to the bill of complaint of Richard S. Coxe.

Respondent states, in amendment of his said answer, that he himself continued to act as administrator and attorney for said estate, subsequently to the arrival of Mr. Goix, the agent of Mrs. Baldwin, by virtue of authority received from said agent, and as administrator as aforesaid, and not at all invirtue of any contract with the [said] John Baldwin, whose authority in the premises, if any, was revoked by the death of Samuel Baldwin.

Respondent further states, that after notice was given to Mr. Coxe by said Goix, and by this respondent, that his connexion with the case as counsel was unauthorized, the place of Mr. Coxe was supplied by Robert J. Walker, esq., who was employed by Mr. Goix, and continued to act as counsel until the award was made by the board of commissioners, and who was paid by this respondent for his services so rendered, in consequence of orders to that effect from the agent of Mrs. Baldwin.

Respondent further states, that he has been informed and believes, that the reason why Mrs. Baldwin did not desire the services of Mr. Coxe was, that she was not on friendly terms with John Baldwin, and did not wish to employ counsel known to be acting for him.

April 3d, 1852. ANDREW WYLIE, Jr.

Sworn to in open court.

Test: JOHN A. SMITH, *Clerk*.

Whereupon the said cause was regularly set for hearing on the bill, answer, general replication, and amended answer; and all and singular the premises being by the court here seen and understood, and the said parties, by their solicitors aforesaid, being heard, and after mature deliberation being thereupon had, the said court made the following decree in the premises:

Decree.

Richard S. Coxe, complainant.
vs.
Andrew Wylie, jr., adm'r of S. Baldwin.

In equity.

This cause having been set down for hearing, by consent upon the bill, answer, general replication, and the testimony filed in the case, and having been argued by counsel, and having been fully and materially considered by the court, it is thereupon, on this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and fifty-two, ordered, adjudged, and decreed, that the averments in said bill contained are fully established and sustained, and that complainants

is justly and truly entitled to the relief which he prays; and inasmuch as it is thus shown and established that said respondent, as administrator of Samuel Baldwin, did obtain an award as averred, for the sum of seventy-five thousand dollars, which said sum it is admitted that he has received from the Government of the United States, and that he holds the same free and clear of all debts due by said intestate; and it being fully shown and established that, by and under the contract made in the lifetime of said Samuel Baldwin between the said Samuel and said complainant, said complainant is justly and equitably entitled to have and receive out of said fund, so in the hands of said defendant, as administrator as aforesaid, at the rate of five per centum on the said sum of seventy-five thousand dollars.

Whereupon, it is now further ordered, adjudged, and decreed, that said defendant, as administrator as aforesaid, do forthwith pay over to said complainant the sum of three thousand seven hundred and fifty dollars.

And whereas it further appears, and it is admitted, that said award became and was payable to said defendant, as administrator as aforesaid, on the sixteenth day of May, eighteen hundred and fifty-one, it is further ordered, decreed, and adjudged, that said defendant, as administrator as aforesaid, do further pay to said complainant interest on said sum of three thousand seven hundred and fifty dollars, to be calculated and estimated from said 16th May, 1851, until paid, together with the costs of this suit.

By order of the court.

Test: JOHN A. SMITH, *Clerk*.

Appeal prayed to Supreme Court of the United States.

Thereupon the said Andrew Wylie, jr., prayed an appeal from the judgment and decree of the court aforesaid to the Supreme Court of the United States, and to him the same is granted.

Whereupon the said defendant files in court here a certain writing obligatory, commonly called an appeal bond, in the words following, to wit:

Appeal bond.

Know all men by these presents, that we, Andrew Wylie, jr., and Charles D. Selding, are held and firmly bound unto Richard S. Coxe, in the full and just sum of two hundred dollars, lawful money, to be paid to the said Richard S. Coxe, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, jointly and firmly, by these presents.

Sealed with our seals, and dated this sixth day of May, eighteen hundred and fifty-two.

Whereas lately at a circuit court of the District of Columbia, sitting

in equity in and for the county of Washington, in a cause wherein the said Richard S. Coxe was complainant, and the said Andrew Wylie, junior, administrator of Samuel Baldwin, was defendant, a decree was rendered against the said defendant, from which decree the said defendant has prayed and entered an appeal to the Supreme Court of the United States.

Now, the condition of the above obligation is such, that if the said Andrew Wylie, jr., shall prosecute his said appeal with effect, and answer all damages and costs, if he fails to make his plea good, then this obligation to be null and void, otherwise to be and remain in full force and virtue in law.

ANDREW WYLIE, JR., [SEAL.]
CHARLES DE SELDING. [SEAL.]

Signed, sealed, and delivered, in presence of—
SMITH THOMPSON,
M. LAPEYRE.

Approved by the court, May 15, 1852.

On the back of the above bond appears the following endorsement, to with :

" Left by Mr. Wylie in the clerk's office on the 6th May for approval.
" Approved and filed 15th May, 1852."

The said defendant filed in court here the following motion in the said cause, to wit :

Motion to open decree for rehearing, 14th May, 1852.

RICHARD S. COXE
vs.
ANDREW WYLIE, JR., administrator of the estate of Samuel Badwin, deceased.

And now, to wit, 14th May, 1852, motion by defendant to open the decree, and for rehearing founded on the facts stated in his petition this day filed.

ANDREW WYLIE, JR., *P. P.*

Petition above referred to.

RICHARD S. COXE
vs.
ANDREW WYLIE, JR., administrator of the estate of Samuel Baldwin, deceased.

In equity.

Petition.

The petition of the above defendant respectfully represents, that on the 27th day of March last, the said Richard S. Coxe, in company

with Dr. John Baldwin, called at the office of defendant in the city of Washington, and representing that the said John Baldwin was about to leave the city, requested as an act of courtesy and fairness, that the statement which he produced, drawn up in the handwriting of the said Baldwin, might be admitted as evidence in this cause, as there was not then sufficient time to have his deposition regularly taken. At that time there were no pleadings in the cause, except only the bill and the answer.

To the proposition thus made defendant acceded in a friendly spirit, and with a disposition to do what was fair under the circumstances, as they were represented to be by the said complainant.

The following agreement was then written by the said Richard S. Coxe on the back of the said Baldwin's statement:

"It is agreed that this statement of Dr. John Baldwin be received in evidence in the above cause, as if regularly taken according to law, and that the said cause be at once set down for hearing.

R. S. COXE,
For complainant.
ANDREW WYLIE, Jr.,
Administrator of Samuel Baldwin.

"*March* 27, 1852."

On the twenty-fourth day of April following, nearly one month subsequent to the foregoing occurrence, the above cause was argued before the court. Up to that period no additional pleadings were filed or entered of record in this cause, except only a short amended answer, which had been filed by the consent of the court, and upon notice to the said Richard S. Coxe, on the 3d day of April preceding. Since the argument of this cause on the said 24th day of April last, and since the decree has been made and filed by the court, defendant on examining the notes on the record has been surprised to discover the following entry interlined between the preceding and subsequent entries on the docket of this cause: "1852, March 27th, gen'l rep." Defendant alleges that this entry was not made at the time it purports to have been made, nor until after the cause was under argument, as it was not upon the record when the argument was commenced, nor has he ever given any consent that it should be entered.

Defendant further states that the same record exhibits the following entries: "1852, April 3d, amended answer filed. Gen'l rep., depo. of Dr. Baldwin, and set for hearing by consent."

On the said 3d day of April, 1852, the said amended answer was filed; but the date is altogether wrong as to the residue of said entries. As already stated, there was no general application entered up to the moment when the argument was commenced on the twenty-fourth of April. The cross examination of Dr. Baldwin took place in open court on this latter date, as that deposition itself shows, and this defendant utterly denies that he ever gave any consent to the filing of a general replication at any time, as stated in these entries.

As it is the purpose of this defendant to have the decision of this court reviewed in the Supreme Court of the United States, and as the foregoing errors are material, and if not corrected may prove fatal to his case, he prays this honorable court that they will direct the clerk of the court to correct the same, so that they shall conform to the facts; or that the decree heretofore made in this cause may be set aside, so that he may have the opportunity of proving, as he is able to do, all the allegations contained in the answer, and the amended answer, filed by him in this cause, that are material, and which he has found to be denied and contradicted, only since the argument of the cause, by the antedating and misentries complained of as aforesaid.

ANDREW WYLIE, JR., *P. P.*

Sworn to in open court.
Test: JNO. A. SMITH, *Clerk*.
May 14*th*, 1852.

Affidavit of service and demand under the decree, May 15, 1852.

R. S. COXE
vs.
A. WYLIE, administrator, &c.

Circuit court, March term, 1852, in chancery.

On this 15th day of May, 1852, in open court, personally appears J. M. Carlisle, and makes oath in due form of law, that at the request of R. S. Coxe, the complainant in the above entitled cause, he this day served on the defendant, A. Wylie, the within copy of the decree (copied in page) in the said cause; and that the said defendant refused to make the payment therein mentioned, stating that it was his intention to take some further proceeding or proceedings in said cause.

J. M. CARLISLE.
Test: JOHN A. SMITH, *Clerk*.

17*th May*, 1852, *rule on defendant to show cause, &c.*

Whereupon the court passed the following order:

RICHARD S. COXE
vs.
ANDREW WYLIE, Jr., adm'r of Sam'l Baldwin.

March term, 1852.

It appearing to the court that a certified copy of the decree entered in this cause has been duly served upon said defendant, and that he, said defendant, has neglected and refused to obey the order and decree aforesaid, made in this case on the 28th day of April, 1852, it is therefore, on this 17th day of May, 1852, ordered that said defendant show cause, if any he hath, on the 21st instant, why an attachment and sequestra-

tion, or other execution, should not issue against him in conformity with the statute in such cases made and provided.

By order of the court.

Test: JNO. A. SMITH, *Clerk*.

May 17th, 1852.

Whereupon the said complainant filed, May 19, 1852, in court here the following answer to the petition of the said defendant for rehearing, &c., to wit:

RICHARD S. COXE
vs.
ANDREW WYLIE, Jr., administrator, &c.

In equity.

The above named complainant, in answer to the petition filed by said defendant on the 14th instant, says, that shortly after said defendant filed his original answer to the bill of complaint, this complainant gave directions to have a general replication filed, as it was clearly his right to do. He supposed that this direction had been executed, until on examining the minutes on the 27th March last, he discovered that the entry had been omitted, and then directed it to be done, and the case set for hearing. The statement of Dr. John Baldwin, and the agreement on the back of it, had been made and entered into on that morning.

The papers were then handed to the court; complainant being then under the impression that it was the understanding of both parties that the case should be submitted without argument. Complainant, in the course of two or three days, learned from Judge Morsell that Mr. Wylie wished to be heard in the case, and the following Saturday, April 3d, was fixed by the court by consent of parties for the hearing. In consequence of the court being otherwise occupied on that day, the hearing was postponed, and finally, upon the 24th April, 1852, the case was called for hearing. Mr. Wylie then applied to the court to have the agreement endorsed on Dr. Baldwin's statement rescinded, which the court refused to do. Complainant then stated that as defendant had alleged that the statement made by Dr. B. was not as full as he desired, and as Dr. B. was then in court, he, the complainant, would consent that defendant might at once proceed and take the further deposition of the witness, on condition that it should be considered as a continuation of his former statement, and taken as of the same day. This having been acceded to, Dr. B.'s deposition was taken in open court, both parties propounding interrogatories to witness, and, with the agreement at its foot, was duly filed.

The argument of the case then proceeded, and it was argued on both sides, as if a general replication had been filed, according to the recollection of complainant. After the argument had been closed, Mr. Wylie remarked that no replication had been entered on the minutes,

and, upon inspection, such appeared to be the case. His honor, Judge Morsell, then stated that he had a distinct recollection that, on the day when the papers were handed to him, and before they were thus handed, viz., March 27, 1852, complainant did, in open court, and in the hearing of the judge, direct the clerk to enter the general replication. This statement was corroborated by Mr. John A. Smith, the clerk, who stated that the entry was omitted to be made by his own inadvertence. After a decided opposition to it by Mr. Wylie, the court directed the entry to be made, nunc pro tunc, in the presence and hearing of both parties. The entry was accordingly then made, which, from necessity and the nature of the case, was made, and could properly only be made, by an interlineation on the docket. After these public acts in open court, and in the hearing of both parties, it is not easy to comprehend the ground upon which petitioner now avers that, "since the argument of the case on the 24th day of April last, and since the decree was made and filed by the court, defendant on examining the notes on the record has been surprised to discover the following entry interlined between the preceding and subsequent entries on the docket of this case: '1852, March 27th, genl. repn.' Defendant alleges that this entry was not made at the time it purports to have been made, nor until the case was under argument; it was not upon the record when the argument was commenced, nor has he ever given any consent that it should be so entered."

To reconcile this statement of defendant's surprise with the facts of the case can only be done by assuming that the only ground of this surprise was owing to the form of the entry, it being made by an interlineation, for as to every thing else petitioner was fully apprised of every fact which complainant has set forth; and the fact of the entry being interlined in its proper place on the minutes, could occasion no real surprise to any one accustomed to examine the minutes of any court where interlineations are of frequent, if not daily, occurrence, and in the most solemn acts.

In answer to the next allegation in this petition, in which it is averred that the same record exhibits the following entries: "1852, April 3d, amended answer filed, genl. repn.; deposition of Dr. Baldwin, and set for hearing by consent." On the said 3d day of April, 1852, the amended answer was filed, but the date is altogether wrong as to the residue of said entries. As already stated, there was no general replication entered up to the moment when the argument was commenced, on the 24th April. The cross examination of Dr. Baldwin took place in open court on this latter date, as that deposition itself shows, and this defendant utterly denies that he ever gave any assent to the filing of the general replication at any time.

Complainant, in answering this part of the petition, will endeavor to do it in language which respect for this honorable court prescribes, rather than employ such as the paper to which he responds would justify.

The apparent belief which this petition implies is, that the assent of

a defendant is an essential preliminary to the filing a general replication. It is not necessary to state that such replication is always a matter of right to be exercised by complainant at his own pleasure and discretion. The utter confusion which the petition exhibits between "the notes on the record," "the docket of this cause," "the same record," and the general chancery docket of the court, may perhaps demand no other comment than that it betrays at least a want of familiarity with the practice of courts of equity, and especially of our own.

In regard to the language of the entry, of which complaint is made, and which is charged as erroneous, this complainant might perhaps leave to the clerk the refutation of so grave an accusation. But it is obvious, from a perusal of the entry as quoted by the petitioner himself, that the charge of misentry recoils rather on the accuser than rests upon the accused. The petition avers, and this averment is sustained by the oath of the party, and was deliberately drawn up in his own handwriting, that the entry made by the clerk avers that he, the petitioner, had assented to the filing of the general replication, and that no such assent had been given as stated.

It is obvious, on the slightest examination of the entry on the docket, which petitioner quotes, that it does not state what petitioner deliberately avers and swears it does state, and upon which he makes this grave accusation against a sworn officer of the court, that the petitioner did give such assent. The only thing which the entry states to have been done by consent is, that the case was thus set for hearing. It is hoped that the truth of this entry will not be denied in the face of the written agreement of the parties on file in this case.

It may further be remarked, and it is essential to a correct understanding of the subject, that it should be noticed that, if the charge be true, and that the consent stated in the entry, instead of being limited to the single fact that the case was thus set for hearing, was designed to comprehend all the matters contained in the entry, then it must be considered as averring that the amended answer was filed on the 3d April by consent. It did not suit the petitioner to charge this as untrue, although, upon the construction he gives to the entry, he was fully aware that such was the case. He perfectly well knew what this respondent had averred in open court, and in his presence and hearing, and which is now again reiterated, that on the 3d April, 1852, the day which had been fixed for the hearing of the argument of the case, and when this respondent had gone to the court for the purpose, and in expectation of, arguing the case, that he, the petitioner, handed to respondent a paper, which he stated to be an amended answer which he had prepared to meet the evidence which Dr. Baldwin had given; that respondent hastily cast his eyes over the paper, but, without reading it through, returned it with the remark that he could not consent to its being filed, and that it was too late to present it when the case had been set for hearing, and the day for hearing had arrived. Such was in substance, if not in precise terms, the language used. Afterwards, and without the knowledge of complainant, who never heard of it until the

24th April, the day on which the cause was heard, said petitioner presented said amended answer to the court, and, without apprising the court that complainant had objected and refused his assent to the filing of said paper, obtained, as a matter of course, an order to file it. This respondent believes that if the court had been apprised of the objection which had been made, that the evidence in the case had been closed and published, that the cause had been set for hearing, and the day fixed for argument had arrived, (facts which, in honor and fairness, ought to have been disclosed,) no order would have been made to file the paper in question.

The petitioner further represents that it is his purpose to have the decision of this cause reviewed in the Supreme Court, "and as the foregoing errors are material, and, if not corrected, may prove fatal to his case, he prays the honorable court that they will direct the clerk of the court to correct the same, so that they shall conform to the facts, or that the decree heretofore made in this case may be set aside, and he may have the opportunity of proving, as he is able to do, all the allegations contained in the answer and the amended answer, filed by him in this case, which are material, and which he has found to be denied and controverted, only since the argument of the case, by the antedating and misentries complained of as aforesaid."

This respondents feels a difficulty in replying to such allegations in the way which they merit, without overstepping the restraints which he has imposed upon himself; he cannot however refrain from saying that it is a direct controvertion of the facts in the case, that petitioner has found only since the argument of the case that the allegations contained in the answer and amended answer were denied and controverted. He knew this at least when he saw Dr. Baldwin's statement on the 27th March; he knew it when he himself argued the case after it had been opened by Mr. Redin, on the 24th April, who insisted upon the effect of the general replication, which all parties then supposed to have been entered. Respondent further says, that it is equally at variance with the facts that petitioner has found, only since the argument, what he chooses to characterize as the antedating and mis-entries complained of." On the contrary, this respondent has been informed and believes, that said petitioner never suspected that a replication had not been filed to his answer until the defect and omission in the docket entries was pointed out to him by an officious party on the 24th April.

Respondent further says that, if it could be shown that by false and erroneous entries on the docket this honorable court had been led into error, and to give a decision against law, justice, and equity, particularly in a case in which he was personally interested, and in which he had obtained a judgment not warranted by justice and equity, he would be among the last to resist any action of the court by which the error might be rectified. Under the circumstances, however, of this case, while entertaining the most solemn conviction that nothing has transpired, no entry made but in accordance with truth and justice, and the practice of the court, he cannot admit that either justice requires, or the power

of the court can authorize, any alteration in the record at this stage of the case.

He also asks the court to file, in connexion with this answer, the statement of John A. Smith, the clerk of the court, and that of his honor Judge Morsell, as to the facts within their respective knowledge. And he prays that the petition be dismissed with costs.

April 19, 1852. RICHARD S. COXE.

Statement of Jno. A. Smith.

Statement of John A. Smith referred to in the foregoing answer of Richard S. Coxe.

RICHARD S. COXE
vs.
ANDREW WYLIE, jr., ad'r, &c. } In chancery.

On the 27th March last, (judging by the date of agreement of counsel,) Mr. Coxe presented the papers in this cause to the court, first directing me (as clerk) to enter a general replication, and set the cause for hearing. I replied that I would do so, and the papers were handed to the court. The court was engaged on the law docket, and I had not an opportunity of making the entries at the moment, and wholly forgot to do so.

On the 3d of April Mr. Wylie filed an amended answer.

On the 24th April the cause was taken up for argument. My omission to enter the general replication was then discovered. Mr. Wylie contended there was no replication to the answer, and that it was then too late to file it. Mr. Coxe said he had ordered the clerk to enter it, and objected to the filing of the amended answer. Judge Morsell, as well as myself, recollected Mr. Coxe's order to have the replication entered; therefore, the court directed that the replication be entered as of that date, when it was directed as aforesaid, which was done.

After some delay the court said, as the parties were not ready the court would proceed to other business, and take up the cause when they were ready. Mr. Wylie said, if the court would give them a few minutes, every thing, he thought, would be made right; that he wanted the benefit of Dr. Baldwin's testimony; that the certificate he, (Dr. B.) had given the complainant was not full enough. Mr. Coxe assented to the taking Doctor Baldwin's deposition, to be considered taken as nunc pro tunc, and I supposed to the filing of the amended answer; the testimony was taken. I presumed all was then right, and entered the general replication to the amended answer, and set the cause for hearing on the docket.

All these entries were made on that day; the decree was made the 28th April.

JNO. A. SMITH.

Sworn to before

H. NAYLOR,
J. Peace.

The foregoing statement, so far as it alludes to what I said, is correctly stated.

JAS. S. MORSELL.

Thereupon the court directs that the entry of 27th March, general replication nunc pro tunc, ordered 24th April, is correct.

Motion to open decree overruled.

Whereupon all and singular the premises being seen and heard, and after mature deliberation, it is this 22d day of May, 1852, by the court ordered, that the motion to open the decree of the 28th April, and for a rehearing of the same, be, and the same is, hereby overruled.

Appeal to Supreme Court.

And whereupon the said defendant prayed an appeal from as well the above judgment and decree, as the judgment and decree of the 28th April, made by the court aforesaid in the premises, to the Supreme court of the United States, and to him it is granted.

Whereupon he filed in court here the following appeal bond, to wit:

Appeal bond.

Know all men by these presents, that we, Andrew Wylie, jr., and Charles De Selding, are held and firmly bound unto Richard S. Coxe in the full and just sum of seven thousand five hundred dollars, lawful money, to be paid to the said Richard S. Coxe, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-second day of May, eighteen hundred and fifty-two.

Whereas lately, at a circuit court of the District of Columbia, sitting in equity, in and for the county of Washington, in a cause wherein the said Richard S. Coxe was complainant, and the said Andrew Wylie, jr., administrator of the estate of Samuel Baldwin, was defendant, a decree was rendered against the said defendant, from which decree the said defendant has prayed and entered an appeal to the Supreme Court of the United States.

And whereas, at a subsequent day of the same term, to wit, on the 14th day of May, 1852, said defendant presented his petition for a rehearing, and that said decree should be set aside, &c.; which petition, after an answer to the same *to the same* had been put in by said complainant, and after argument, was overruled and refused by the said court, at the same term, to wit, on the day of the date hereof; to which decision of the said court said defendant hath prayed an appeal in open court, and the same hath been allowed.

Now the condition of the above obligation is such, that if the said Andrew Wylie, jr., shall prosecute his said appeal with effect, and answer all damages and costs if he fails to make his pleas good, then the

2140.

obligation to be null and void, otherwise to be and remain in full force and virtue in law.

ANDREW WYLIE, Jr., [SEAL.]
CHARLES DE SELDING. [SEAL.]

Signed, sealed, and delivered in presence of—
CHAS. MCNAMEE.

Approved of by the court May 23, 1852.
Test: JNO. A. SMITH, *Clerk*.

And the same being approved of, it is ordered that a record of the proceedings aforesaid, with all things thereunto relating, be transmitted to the said Supreme Court of the United States, which is done accordingly.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, this 3d day of December, 1852. [SEAL.]

JNO. A. SMITH, *Clerk*.